

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM D. MCCULLOUGH
Claimant

VS.

HF RUBBER MACHINERY, INC.
Respondent

AND

TRAVELERS CASUALTY & SURETY CO.
Insurance Carrier

Docket No. **1,041,964**

ORDER

Respondent and its insurance carrier request review of the September 17, 2009 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) determined claimant suffered accidental injury on August 11, 2009, arising out of and in the course of employment with respondent.

Respondent requests review and argues claimant failed to meet his burden of proof to establish he suffered a work-related accidental injury to his left knee.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant had been employed by respondent for over nine years. His job involved using a thirteen pound grinder to grind rotors. This job required him to stand and push down with his body as well as bend and twist. As he was performing his job on August 11, 2009 he felt a pop in his left knee and experienced an onset of knee pain. He sought

treatment the next day and provided the nurse practitioner a history that his knee had popped the day before.

During the proceedings on this claim the claimant had also indicated that his knee pain had started sometime in July of 2008 and as he continued working his left knee pain had worsened with several episodes where his knee had popped. This led to a number of questions regarding when he suffered the popping incident and as noted by the ALJ the claimant's answers revealed he was a poor historian. Nonetheless, the medical records corroborate claimant's testimony that on August 11, 2009 he suffered a popping incident that caused him to seek medical treatment. And the medical records further indicate that after standing at work for eight hours a day claimant experienced daily pain in his left knee.

The claimant testified that he informed his supervisors at work that he had injured his knee and was seeking medical treatment. The supervisors testified and denied that claimant had told them he had injured his knee at work. And there was testimony that on one occasion when claimant called in to report that he would not be in to work, he stated that he had injured his knee at home. Claimant denied making that statement and it was unclear when that alleged call was made. But it should be noted that timely notice was not disputed and respondent offered the testimony to undermine the claimant's credibility.

This Board Member notes that where there is conflicting testimony, as in this case, credibility of the witnesses is important. Here, the ALJ had the opportunity to personally observe the claimant and several of respondent's representatives testify in person. The ALJ specifically noted that claimant was a credible witness and believed his testimony over the respondent's representative's testimony. This Board Member concludes that some deference may be given to the ALJ's findings and conclusions because he was able to judge the witnesses' credibility by personally observing them testify.

Moreover, the medical records generally corroborate claimant's testimony that he had hurt his left knee at work. Accordingly, this Board Member affirms the ALJ's Order for Compensation.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.²

¹ K.S.A. 44-534a.

² K.S.A. 2008 Supp. 44-555c(k).

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated September 17, 2009, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2009.

DAVID A. SHUFELT
BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Ronald A. Prichard, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge